

This is to document that notices regarding transfer of this case were served by mail on the following attorneys.

1:03-cv-02913 Alpha Cord, Inc. v. New England Cord

Thomas G. Tidwell, Esq.  
Kasowitz Benson Torres & Friedman  
1360 Peachtree Street, NE  
One Midtown Plaza, Suite 1150  
Atlanta, GA 30309

Laura D. Tubbs, Esq.  
Kasowitz Benson Torres & Friedman  
1360 Peachtree Street, NE  
One Midtown Plaza, Suite 1150  
Atlanta, GA 30309

John C. Herman, Esq.  
Duane Morris  
1180 West Peachtree Street, NW  
Suite 700  
Atlanta, GA 30309-3448

Claus D. Melarti, Esq.  
Duane Morris  
1180 West Peachtree Street, NW  
Suite 700  
Atlanta, GA 30309-3448

Telka L. Johnson, Esq.  
Duane Morris  
1180 West Peachtree Street, NW  
Suite 700  
Atlanta, GA 30309-3448

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

ALPHA CORD, INC. and  
DAVID P. MEYERS,

Plaintiffs,

v.

NEW ENGLAND CORD BLOOD BANK,  
INC. and JOHN R. RIZZA,

Defendants.

04-10449 MEL

Civil Action File

No. 1:03-CV-2913-JEC

DEFENDANTS' STATUS REPORT AND  
RENEWED MOTION TO DISMISS AND/OR TRANSFER

NOW COME Defendants New England Cord Blood Bank, Inc. ("NECBB") and John R. Rizza (collectively, "Defendants") and hereby make and file this Status Report on the parallel action involving NECBB and Alpha Cord, Inc. ("Alpha Cord") and David P. Meyers ("Meyers") in the United States District Court of Massachusetts (the "Massachusetts Action"). Because the Massachusetts Court has found that this case should proceed in Massachusetts, Defendants also renew their Motion to Dismiss this case in favor of the Massachusetts Action.

In the Massachusetts Action, that Court has taken evidence and heard arguments on the merits of this case in connection with NECBB's motion for preliminary injunction. The Massachusetts Court has also heard argument and

taken evidence on Alpha Cord's and Myers' motion to stay the Massachusetts Action and motion to transfer that action to this Court. The Court held a hearing on those motions on October 23, 2003.

On January 12, 2004, the Massachusetts Court sent notice to the parties that a scheduling conference would occur on February 20, 2004. A true and correct copy of this Notice is attached hereto as Exhibit A. Thereafter, on January 21, 2004, the Massachusetts Court issued a 12-page opinion, a true and correct copy of which is attached hereto as Exhibit B, denying the motions to stay and transfer the Massachusetts Action and denying NECBB's motion for a preliminary injunction.

In rejecting Alpha Cord's motion to transfer, the Massachusetts Court acknowledged that the "first filed" rule generally dictates which federal court action should proceed. The Court, however, specifically found that the "balance of the conveniences weighs in favor of" the Massachusetts Action. (Exhibit B at 5). The final consideration addressed by the Court was that, under the parties' agreement, Massachusetts law was to be applied to this case. The Court therefore decided that the case should not be transferred and that the Massachusetts Action will proceed.

Accordingly, since the merits of this case are proceeding before the Massachusetts Court, Defendants respectfully renew their motion to dismiss this action in favor of the Massachusetts Action. That Court has already heard

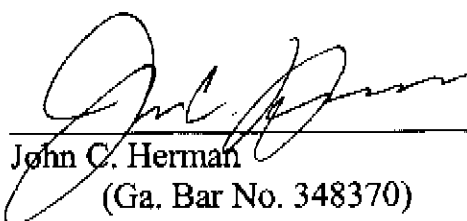
evidence and reviewed the merits of the claims – at least on a preliminary basis. That Court is also in a better position to determine and apply Massachusetts law to the case. In the interests of judicial economy, this action should be dismissed in favor of the Massachusetts Action.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court dismiss this case in favor of the Massachusetts Action.

Respectfully submitted, this 23<sup>rd</sup> day of January, 2004.

DUANE MORRIS LLP



John C. Herman  
(Ga. Bar No. 348370)

Claus D. Melarti  
(Ga. Bar No. 501181)

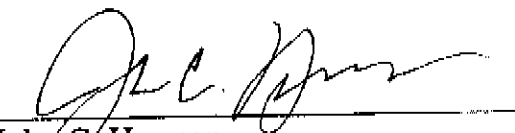
Telka L. Johnson  
(Ga. Bar No. 395485)

1180 West Peachtree Street  
Suite 700  
Atlanta, Georgia 3009-3448  
(404) 253 -6900 (telephone)  
(404) 253-6901 (facsimile)

Counsel for Defendants  
NEW ENGLAND CORD BLOOD BANK,  
INC. and JOHN R. RIZZA

L.R. 7.1(D), N.D. GA. CERTIFICATE

Pursuant to L.R. 7.1(D), N.D. Ga., I hereby certify that the foregoing Defendants' Status Report and Renewed Motion to Dismiss And/Or Transfer has been prepared using Times New Roman Fourteen (14) point font as required by the Court in L.R. 5.1(B), N.D. Ga.

  
\_\_\_\_\_  
John C. Herman

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U.S. District Court  
U.S. District Court for the Northern District of Georgia (Atlanta)

CIVIL DOCKET FOR CASE #: 03-CV-2913

Alpha Cord, Inc., et al v. New England Cord, et al  
Assigned to: Judge Julie E. Carnes  
Demand: \$13,089,000  
Lead Docket: None  
Dkt # in DeKalb State Court : is 03A104165

Filed: 09/26/03  
Jury demand: Plaintiff  
Nature of Suit: 190  
Jurisdiction: Diversity

Cause: 28:1441 Petition for Removal- Breach of Contract

ALPHA CORD, INC.  
plaintiff

Thomas G. Tidwell  
[COR LD NTC]  
Laura D. Tubbs  
[COR LD NTC]  
Kasowitz Benson Torres &  
Friedman  
1360 Peachtree Street, NE  
One Midtown Plaza, Suite 1150  
Atlanta, GA 30309  
404-260-6080

DAVID P. MEYERS  
plaintiff

Thomas G. Tidwell  
(See above)  
[COR LD NTC]  
Laura D. Tubbs  
(See above)  
[COR LD NTC]

v.

NEW ENGLAND CORD BLOOD BANK,  
INC.  
defendant

John C. Herman  
[COR LD NTC]  
Claus D. Melarti  
404-253-6945  
[COR LD NTC]  
Tara L. Johnson  
404-253-6942  
[COR LD NTC]  
Duane Morris  
1180 West Peachtree Street, NW  
Suite 700  
Atlanta, GA 30309-3448  
404-253-6900

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FEB 26 2004

Luther D. Starnes, Clerk  
By *[Signature]*  
Deputy Clerk

JOHN R. RIZZA

John C. Herman

Docket as of February 26, 2004 4:26 pm

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Proceedings include all events.

1:03cv2913 Alpha Cord, Inc., et al v. New England Cord, et al  
defendant

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(see above)  
[REDACTED]  
Gerald D. Melarti  
(see above)  
[REDACTED]  
William L. Johnson  
(see above)  
[REDACTED]

Proceedings include all events.

CLOSED

1:03cv2913 Alpha Cord, Inc., et al v. New England Cord, et al

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09/26/03 1 NOTICE OF REMOVAL with COMPLAINT (Pretrial instructions attached to service copies and returned to attorney for service.) FILING FEE \$ 150.00 RECEIPT # 511592 (jdb) [Entry date 09/29/03]

9/26/03 1 MOTION by plaintiff Alpha Cord, Inc. for preliminary injunction with brief in support. (jdb) [Entry date 09/29/03]

9/26/03 2 MOTION by defendants to dismiss with declaration of John R. Rizza and with brief in support. (jdb) [Entry date 09/29/03]

10/3/03 3 REQUEST by plaintiff for expedited hearing on their motion for preliminary injunction and dfts' motion to dismiss (jph) [Entry date 10/07/03]

10/7/03 4 Brief by plaintiffs in opposition to [2-1] motion to dismiss (jph) [Entry date 10/08/03]

10/10/03 5 Opposition by defendants to the [3-1] motion for expedited hearing on their motion for preliminary injunction and motion to dismiss (jph) [Entry date 10/14/03]

10/14/03 6 Notice of filing original affidavit by plaintiffs. (jph) [Entry date 10/16/03]

10/15/03 7 ORDER by Judge Judge E. Carnes DENYING [3-1] motion for expedited hearing on their motion for preliminary injunction and dfts' motion to dismiss by David P. Meyers, Alpha Cord, Inc. (cc by CRD) (jph) [Entry date 10/16/03]

10/16/03 -- SUBMITTED to Judge Judge E. Carnes on [1-1] motion for preliminary injunction and [1-1] motion to dismiss (jph) [Entry date 10/16/03]

10/22/03 8 Reply brief in support of [3-1] motion to dismiss by defendants. (jph) [Entry date 10/24/03]

11/6/03 9 SUPPLEMENTAL REQUEST by plaintiffs for hearing on their motion for preliminary injunction and dfts' motion to dismiss. (jph) [Entry date 11/10/03]

11/10/03 10 Defendants' opposition to [3-1] motion for hearing on their motion for preliminary injunction and dfts' motion to dismiss (jph) [Entry date 11/13/03]

11/18/03 11 Memo by CRD directed to CRD to submit a status report within 5 days regarding the Massachusetts action and responding to pla's supplemental request for hearing. (cc by CRD) (jph) [Entry date 11/20/03]

11/25/03 12 Notice of filing report of service on John Rizza by plaintiffs. (jph) [Entry date 12/01/03]



Proceedings include all events.

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12/1/03 -- SUBMITTED to Judge J. R. Carnes on [9-1] motion for hearing on their motion for preliminary injunction and dfts' motion to dismiss (file in chambers) (jph) [Entry date 12/01/03]

1/27/04 13 STATUS REPORT by [redacted] New England Cord, defendant John R. Rizza. (jdb) [Entry date 01/28/04]

1/27/04 13 MOTION by defendant to dismiss and/or transfer (jdb) [Entry date 01/27/04]

2/13/04 -- SUBMITTED to Judge J. R. Carnes on [13-1] motion to dismiss and/or transfer (jdb) [Entry date 02/13/04]

2/18/04 14 Notice to parties by [redacted] RD, directing parties to file Joint Certificate of [redacted] and Joint prel stmt by 3/1/04 [14-1] [redacted] submitted on 3/3/04 (jlm) [Entry date 02/18/04]

2/25/04 15 ORDER by Judge J. R. Carnes GRANTING as unopposed dft's [13-2] motion to [redacted] DENYING dft's [13-1] motion to dismiss, DENYING [redacted] [9-1] motion for hearing on their motion for preliminary injunction and dfts' motion to dismiss, DENYING [redacted] motion to dismiss and DENYING AS MOOT [redacted] for preliminary injunction. (cc) (jlm) [Entry date 02/25/04]

2/25/04 -- Transmittal of [redacted] documents, certified copy of order transferring and [redacted] United States District Court for the District of [redacted] (jlm) [Entry date 02/25/04]

2/25/04 -- Case terminated. [redacted] [Entry date 02/26/04]